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8 Attorneys for Complainant
9

10 **BEFORE THE**
11 **CALIFORNIA BOARD OF ACCOUNTANCY**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

13 In the Matter of the Accusation and Petition to
Revoke Probation Against:

Case No. D1-2001-28

14 **JOHN BRUCE NESS, CPA**
15 7791 Embury Court
San Diego, CA 92126

DEFAULT DECISION
AND ORDER

16 Certified Public Accountant
17 Certificate No. CPA 48489

[Gov. Code, §11520]

18 Respondent.
19

20 **FINDINGS OF FACT**

21 1. On or about January 9, 2007, Complainant Carol Sigmann, in her official
22 capacity as the Executive Officer of the California Board of Accountancy, filed Accusation and
23 Petition to Revoke Probation No. D1-2001-28 against Respondent, John Bruce Ness, before the
24 California Board of Accountancy, Department of Consumer Affairs, State of California.

25 2. On or about July 31, 1987, the California Board of Accountancy issued
26 Certificate No. CPA 48489 to John Bruce Ness (Respondent). The Certificate was expired
27 during the following periods because the renewal fee and declaration of compliance with
28

1 continuing education requirements had not been submitted: December 1, 1995 through
2 December 25, 1995; December 1, 1997 through December 28, 1997; and December 1, 1999
3 through April 2, 2003.

4 3. On November 22, 2004, in a disciplinary action entitled "In the Matter of
5 the First Amended Accusation Against John Bruce Ness," Case No. AC-2001-28, the California
6 Board of Accountancy adopted Decision and Order No. AC-2001-28, revoking Respondent's
7 Certificate. However, the revocation was stayed and Respondent was placed on probation for
8 three (3) years effective December 22, 2004, with certain terms and conditions, including a
9 60-day suspension from December 22, 2004 through February 20, 2005.

10 4. On or about January 31, 2007, Renee Stein, an employee of the
11 Department of Justice, served by Certified and First Class Mail a copy of the Accusation and
12 Petition to Revoke Probation No. D1-2001-28 (with First Amended Accusation No. AC-2001-28
13 and Decision and Order No. AC-2001-28 attached thereto), Statement to Respondent, Notice of
14 Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7,
15 to Respondent's address of record with the Board, which was and is 7791 Embury Court, San
16 Diego, California 92126. A copy of the Accusation and Petition to Revoke Probation, the related
17 documents and Declaration of Service are attached hereto as Exhibit A and are incorporated
18 herein by reference.

19 5. Service of the Accusation and Petition to Revoke Probation was effective
20 as a matter of law under the provisions of Government Code section 11505, subdivision (c).

21 6. Government Code section 11506 states, in pertinent part:

22 (c) The respondent shall be entitled to a hearing on the merits if the
23 respondent files a notice of defense, and the notice shall be deemed a specific
24 denial of all parts of the accusation not expressly admitted. Failure to file a notice
of defense shall constitute a waiver of respondent's right to a hearing, but the
agency in its discretion may nevertheless grant a hearing.

25 7. Respondent failed to file a Notice of Defense within 15 days after service
26 upon him of the Accusation and Petition to Revoke Probation, and therefore waived his right to a
27 hearing on the merits of Accusation and Petition to Revoke Probation No. D1-2001-28.

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8. California Government Code section 11520 states, in pertinent part:

(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent.

9. Pursuant to its authority under Government Code section 11520, the California Board of Accountancy finds Respondent is in default. The California Board of Accountancy will take action without further hearing and, based on Respondent's express admissions by way of default and the evidence before it contained in Exhibits A, B and C, finds that the allegations in Accusation and Petition to Revoke Probation No. D1-2001-28 are true.

10. The total costs for investigation and enforcement are \$4,469.75 as of March 1, 2007. The costs are set forth in the declarations of T. Michelle Laird and Carol Sigmann, attached hereto as Exhibits B and C, respectively.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent John Bruce Ness has subjected his Certified Public Accountant Certificate No. CPA 48489 to discipline.

2. A copy of the Accusation and Petition to Revoke Probation No. D1-2001-28 and the related documents and Declaration of Service are attached.

3. The agency has jurisdiction to adjudicate this case by default.

4. The California Board of Accountancy is authorized to revoke Respondent's Certified Public Accountant Certificate No. CPA 48489 based upon the following violations alleged in the Accusation and Petition to Revoke Probation:

a. Respondent is subject to disciplinary action for unprofessional conduct under section 5100(g) for a willful violation of section 5037(b) (failure to return client's records);

b. Respondent is subject to disciplinary action for unprofessional conduct under section 5100(g) for a willful violation of Title 16 of the California Code of Regulations, section 68 (failure to return client's records);

///

1 c. Respondent is subject to disciplinary action for unprofessional
2 conduct under section 5100(g) for a willful violation of Title 16 of the California Code of
3 Regulations, section 52 (failure to respond to Board inquiry); and,

4 d. Grounds exist to vacate the stay of revocation of Respondent's
5 Certified Public Accountant Certificate No. CPA 48489 and to impose the order of revocation of
6 said license in that Respondent failed to comply with Probation Conditions No. 2 and No. 5 in
7 Decision and Order No. AC-2001-28.

8 **ORDER**

9 IT IS SO ORDERED that Respondent's Certified Public Accountant Certificate
10 No. CPA 48489, heretofore issued to Respondent John Bruce Ness, is revoked. Pursuant to
11 Government Code section 11520, subdivision (c), Respondent may serve a written motion
12 requesting that the Decision be vacated and stating the grounds relied on within seven (7) days
13 after service of the Decision on Respondent. The agency in its discretion may vacate the
14 Decision and grant a hearing on a showing of good cause, as defined in the statute.

15 This Decision shall become effective on April 29, 2007.

16 It is so ORDERED March 30, 2007.

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19 FOR THE CALIFORNIA BOARD OF ACCOUNTANCY

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23 Default.wpd
DOJ docket number:SD2006801258

24 Attachments:

25 Exhibit A: Accusation and Petition to Revoke Probation No. D1-2001-28, Related
26 Documents and Declaration of Service
27 Exhibit B: Certification of Costs: Declaration of T. Michelle Laird
28 Exhibit C: Certification of Costs: Declaration of Carol Sigmann

Exhibit A

Accusation and Petition to Revoke Probation No. D1-2001-28, Related
Documents and Declaration of Service

1 EDMUND G. BROWN JR., Attorney General
of the State of California
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10 **BEFORE THE**
11 **CALIFORNIA BOARD OF ACCOUNTANCY**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

13 In the Matter of the Accusation and Petition to
Revoke Probation Against:

Case No. D1-2001-28

14 **JOHN BRUCE NESS**

15 7791 Embry Court
San Diego, CA 92126

16 Certified Public Accountant
17 Certificate No. CPA 48489

**ACCUSATION AND
PETITION TO REVOKE
PROBATION**

18 Respondent.

19
20 Complainant alleges:

21 **PARTIES**

- 22 1. Carol Sigmann, (Complainant) brings this Accusation and Petition to
23 Revoke Probation solely in her official capacity as the Executive Officer of the California Board
24 of Accountancy, Department of Consumer Affairs.
- 25 2. On or about July 31, 1987, the California Board of Accountancy issued
26 Certificate Number CPA 48489 to John Bruce Ness (Respondent). The Certificate was expired
27 during the following periods because the renewal fee and declaration of compliance with
28 continuing education requirements had not been submitted: December 1, 1995 through December

1 25, 1995; December 1, 1997 through December 28, 1997; and December 1, 1999 through April
2 2, 2003. Respondent's Certificate will expire on November 30, 2007, unless renewed.

3 3. On November 22, 2004, in a disciplinary action entitled "In the Matter of
4 the First Amended Accusation Against John Bruce Ness," Case No. AC-2001-28, the California
5 Board of Accountancy ordered Respondent's Certificate revoked. However, the revocation was
6 stayed and Respondent was placed on probation for three (3) years effective December 22, 2004,
7 with certain terms and conditions. Respondent's Certificate was ordered suspended for a 60-day
8 period, from December 22, 2004, through February 20, 2005.

9 **STATUTORY PROVISIONS**

10 4. This Accusation and Petition to Revoke Probation is brought before the
11 California Board of Accountancy (Board) under the authority of the following laws. All section
12 references are to the Business and Professions Code unless otherwise indicated.

13 5. Section 118, subdivision (b), of the Code provides that the suspension,
14 expiration, surrender or cancellation of a license shall not deprive the Board of jurisdiction to
15 proceed with a disciplinary action during the period within which the license may be renewed,
16 restored, reissued or reinstated.

17 6. Section 5109 provides that the expiration, cancellation, forfeiture or
18 suspension of a license or other authority to practice public accountancy, or the voluntary
19 surrender of a license shall not deprive the Board of jurisdiction to commence or proceed with
20 disciplinary action against the licensee or to render a decision suspending or revoking the license.

21 7. Section 5100 states in pertinent part:

22 "After notice and hearing the board may revoke, suspend, or refuse to
23 renew any permit or certificate granted under Article 4 (commencing with Section
24 5070) and Article 5 (commencing with Section 5080), or may censure the holder
of that permit or certificate for unprofessional conduct that includes, but is not
limited to, one or any combination of the following causes:

25 "....

26 "(g) Willful violation of this chapter or any rule or regulation promulgated
27 by the board under the authority granted under this chapter."

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1 8. Section 5037 states in pertinent part:

2 "(b) A licensee shall furnish to his or her client or former client, upon
3 request and reasonable notice:

4 "(1) A copy of the licensee's working papers, to the extent that
5 those working papers include records that would ordinarily constitute part of the
6 client's records and are not otherwise available to the client.

7 "(2) Any accounting or other records belonging to, or obtained
8 from or on behalf of, the client which the licensee removed from the client's
9 premises or received for the client's account. The licensee may make and retain
10 copies of documents of the client when they form the basis for work done by him
11 or her."

12 9. Title 16 of the California Code of Regulations, section 52, states in
13 pertinent part:

14 "(a) A licensee shall respond to any inquiry by the Board or its appointed
15 representatives within 30 days. The response shall include making available all
16 files, working papers and other documents requested.

17 "(b) A licensee shall respond to any subpoena issued by the Board or its
18 executive officer or the assistant executive officer in the absence of the executive
19 officer within 30 days and in accordance with the provisions of the Accountancy
20 Act and other applicable laws or regulations."

21 10. Title 16 of the California Code of Regulations, section 68, states:

22 "A licensee, after demand by or on behalf of a client, for books, records or
23 other data, whether in written or machine sensible form, that are the client's
24 records shall not retain such records. Unpaid fees do not constitute justification
25 for retention of client records.

26 Although, in general the accountant's working papers are the property of
27 the licensee, if such working papers include records which would ordinarily
28 constitute part of the client's books and records and are not otherwise available to
the client, then the information on those working papers must be treated the same
as if it were part of the client's books and records."

COST RECOVERY

11. Section 5107(a) of the Code states:

"The executive officer of the board may request the administrative law judge, as
part of the proposed decision in a disciplinary proceeding, to direct any holder of a permit or
certificate found to have committed a violation or violations of this chapter to pay to the board all
reasonable costs of investigation and prosecution of the case, including, but not limited to,
attorneys' fees. The board shall not recover costs incurred at the administrative hearing."

1 **FACTUAL BASIS**

2 12. Commencing on or about December, 2004, and continuing through
3 approximately November, 2005, Respondent's client or former client, K.W.A, made numerous
4 requests for the return of books, records or other data that he provided to Respondent for the
5 purpose of preparing Mr. A's tax returns. Respondent failed to respond to any of Mr. A's
6 requests and failed to return any of his records.

7 13. On or about November 30, 2005, and January 26, 2006, the Enforcement
8 Division of the Board wrote to Respondent requesting that he provide the Board with a written
9 response concerning the complaint filed against him by Mr. A. Respondent failed to respond to
10 the Board's inquiries.

11 14. On or about March 28, 2006, the Enforcement Division issued a subpoena
12 to Respondent demanding the production of documents and other information concerning Mr.
13 A's records by April 14, 2006. Respondent failed to respond to or comply with the subpoena.

14 **FIRST CAUSE FOR DISCIPLINE**

15 (Unprofessional Conduct - Willful Violation - Failure to Return Client's Records)

16 15. Respondent is subject to disciplinary action under section 5100(g) for a
17 willful violation of section 5037(b), in that he failed to return Mr. A's books, records or other
18 data after repeated demands for the return of said records, as set forth in paragraphs 12-14 and
19 incorporated herein by reference.

20 **SECOND CAUSE FOR DISCIPLINE**

21 (Unprofessional Conduct - Willful Violation - Failure to Return Client's Records)

22 16. Respondent is subject to disciplinary action under section 5100(g) for a
23 willful violation of Title 16 of the California Code of Regulations, section 68, in that he failed to
24 return Mr. A's books, records or other data after repeated demands for the return of said records,
25 as set forth in paragraphs 12-14 and incorporated herein by reference.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 (Unprofessional Conduct - Willful Violation - Failure to Respond to Board Inquiry)

3 17. Respondent is subject to disciplinary action under section 5100(g) for a
4 willful violation of Title 16 of the California Code of Regulations, section 52, in that he failed to
5 respond to the Board's written inquiries concerning Mr. A's complaint against him, as set forth
6 in paragraphs 12-14 and incorporated herein by reference.

7 **CAUSE TO REVOKE PROBATION**

8 18. The allegations in paragraphs 1 through 17 are incorporated herein by
9 reference as if fully set forth at this point.

10 **FIRST CAUSE TO REVOKE PROBATION**

11 (Failure to Comply with Rules Relating to the Practice of Public Accountancy)

12 19. At all times after the effective date of Respondent's probation, Condition 2
13 stated, "Respondent shall obey all federal, California, other states' and local law, including those
14 rules relating to the practice of public accountancy in California."

15 20. Respondent's probation is subject to revocation because he failed to
16 comply with Probation Condition 2, referenced above, in that he failed to return Mr. A's books,
17 records or other data after repeated demands for the return of said records, as set forth in
18 paragraphs 12-14 and incorporated herein by reference, in violation of rules relating to the
19 practice of public accountancy.

20 **SECOND CAUSE TO REVOKE PROBATION**

21 (Failure to Cooperate with the Board's Monitoring and Investigation)

22 21. At all times after the effective date of Respondent's probation, Condition 5
23 stated, "Respondent shall . . . cooperate fully with representatives of the Board in its monitoring
24 and investigation of Respondent's compliance with probation terms and conditions."

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22. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 5, referenced above, in that he failed to respond to the Board's written inquiries concerning Mr. A's complaint against him, as set forth in paragraphs 12-14 and incorporated herein by reference, in violation of the condition that he cooperate fully with the Board in its monitoring and investigation of Respondent's compliance with the terms and conditions of probation.

OTHER MATTERS

23. In order to determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on November 22, 2004, the Board adopted Decision and Order No. AC-2001-28, effective December 22, 2004, revoking Certificate No. CPA 48489 issued to Respondent, for violation of Business and Profession Code sections 5100(c), 5100(f), 5037(b)(2), 5050, and 5055, and Board Regulation's 52 and 68. A copy of the Board's Order is attached as Exhibit A and is incorporated herein by reference.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the California Board of Accountancy issue a decision:

1. Revoking the probation that was granted by the California Board of Accountancy in Case No. AC-2001-28, and imposing the disciplinary order that was stayed, thereby revoking Certificate No. CPA 48489 issued to John Bruce Ness;

2. Revoking or suspending or otherwise imposing discipline upon Certificate
Number CPA 48489, issued to John Bruce Ness;

3. Ordering John Bruce Ness to pay the Board's reasonable costs of the investigation and enforcement of this case, pursuant to Code section 5107; and,

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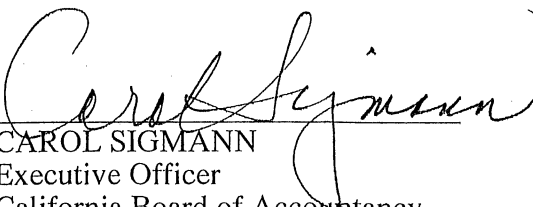
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4. Taking such other and further action as deemed necessary and proper.

DATED: January 9, 2007


CAROL SIGMANN
Executive Officer
California Board of Accountancy
Department of Consumer Affairs
State of California
Complainant

SD2006801258
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10 BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
11 DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA
12

13 In the Matter of the First Amended Accusation
Against:

14 JOHN B. NESS
15 7791 Embry Street
San Diego, California 92126
16

17 Certified Public Accountant
Certificate No. CPA 48489

18 Respondent.
19

Case No. AC-2001-28

**STIPULATION IN
SETTLEMENT AND DECISION**

20 In the interest of a prompt and speedy settlement of this matter, consistent with the
21 public interest and the responsibility of the California Board of Accountancy (hereinafter the
22 "Board"), the parties submit this Stipulation in Settlement and Decision to the Board for its
23 approval and adoption as the final disposition of the Accusation.

24 It is hereby stipulated by and between the parties to the above-captioned matter
25 and their respective counsel that the following is true.

26 1. Respondent JOHN B. NESS (hereinafter "respondent"), holds
27 Certificate No. 48489 of Certified Public Accountant. Said certificate was issued by the Board
28 on July 31, 1987. The license is on active status and will expire on November 30, 2005.

1 2. On or about May 22, 2001, Carol B. Sigmann, in her official capacity as
2 the Executive Officer of the Board, and as the Complainant, issued on behalf of the Board an
3 Accusation, Case No. AC-2001-28, setting forth causes for discipline of the Certified Public
4 Accountant license held by respondent (hereinafter the "Accusation"). The Accusation was duly
5 and properly served upon respondent. On or about June 10, 2001, respondent submitted a Notice
6 of Defense to the Accusation, Case No. AC-2001-28. On or about July 2, 2002, a First Amended
7 Accusation was issued in Case No. AC-2001-28, superseding the allegations and charges in the
8 Accusation. On or about July 16, 2002, the First Amended Accusation was served upon
9 respondent. A true and correct copy of the First Amended Accusation, Case No. AC-2001-28, is
10 attached hereto as Exhibit "A" and is incorporated herein by this reference.

11 3. Complainant Sigmann is represented in this matter by Bill Lockyer,
12 Attorney General of the State of California, by and through Richard D. Garske, Deputy Attorney
13 General.

14 4. Respondent is representing himself in this matter.

15 5. Respondent has received and read the First Amended Accusation in Case
16 No. AC-2001-28, presently pending before the Board.

17 6. Respondent understands the nature of the charges alleged in the First
18 Amended Accusation and that the charges and allegations constitute cause for imposing
19 discipline upon his license to practice as a Certified Public Accountant in California.
20 Respondent is fully aware of his right to a hearing on the charges and allegations contained in the
21 First Amended Accusation and the right to request reconsideration or appeal, as well as all other
22 rights accorded him pursuant to the California Business and Professions Code and Government
23 Code. Respondent freely and voluntarily waives all of these rights.

24 7. Respondent understands that he has the right to use compulsory
25 process to procure the presence of witnesses at a hearing on the First Amended Accusation or to
26 procure documentary evidence to be presented on his behalf, and that by entering into this
27 Stipulation, respondent gives up the right to compulsory process.

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1 8. Respondent understands that at a hearing, he could introduce relevant
2 testimony and exhibits on his own behalf and in mitigation, including exculpatory evidence. At a
3 hearing, respondent would have the opportunity to rebut the evidence against him. Respondent
4 understands that by entering into this Stipulation, he gives up the right to call witnesses or
5 introduce evidence on his own behalf or in mitigation, or to rebut the evidence against him.

6 9. Respondent admits the truth of each and every allegation of First Amended
7 Accusation, Case No. AC-2001-28, and agrees that he has therefore subjected his license to
8 discipline. Respondent agrees to the Board's imposition of penalty, as set forth in the Order
9 below.

10 10. Admissions made by respondent herein are for the purposes of this
11 proceeding, for any other disciplinary proceedings by the Board, and for any petition for
12 reinstatement, reduction of penalty, or application for relicensure, and shall have no force or
13 effect in any other case or proceeding.

14 11. It is understood by respondent that, in deciding whether to adopt this
15 Stipulation, the Board may receive oral and written communications from its staff and the
16 Attorney General's office. Communications pursuant to this paragraph shall not disqualify the
17 Board or other persons from future participation in this or any other matter affecting respondent.
18 In the event this settlement is not adopted by the Board, the Stipulation will not become effective
19 and may not be used for any purpose, except for this paragraph, which shall remain in effect.

20 12. The parties agree that facsimile copies of this Stipulation, including
21 facsimile signatures of the parties, may be used in lieu of original documents and signatures. The
22 facsimile copies will have the same force and effect as original signatures.

23 13. In consideration of the foregoing admissions and findings, the parties
24 agree that the Board may, without further notice or formal proceedings, issue and enter an Order
25 as follows.

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A. IT IS HEREBY ORDERED that Certified Public Accountant Certificate issued to JOHN B. NESS, is revoked. However, the revocation is stayed and placed on probation for three (3) years upon the following terms and conditions.

1. SUSPENSION

Certified Public Accountant Certificate No. 48489 issued to respondent JOHN B. [REDACTED] suspended for sixty (60) days. During the period of suspension, respondent shall engage in no business for which certification as a Certified Public Accountant or Public Accountant is required as prescribed in Business and Professions Code, Division 3, Chapter 1, Section 5051.

2. OBEY ALL LAWS

Respondent shall obey all federal, California, other states' and local laws,
relating to the practice of public accountancy in California.

3. SUBMIT WRITTEN REPORTS

Respondent shall submit written reports to the Board within ten (10) days
quarter on a form obtained from the Board. Respondent shall submit,
ry, such other written reports, declarations, and verification of actions as
eclarations shall contain statements relative to respondent's compliance
nditions of probation. Respondent shall immediately execute all release of
may be required by the Board or its representatives.

4. PERSONAL APPEARANCES

Respondent shall, during the period of probation, appear in person at
as directed by the Board or its designated representatives, provided such
lished in a timely matter.

5. COMPLY WITH PROBATION

Respondent shall comply fully with the terms and conditions of the
the Board and shall cooperate fully with representatives of the Board in its
igation of respondent's compliance with probation terms and conditions.

Journal of Management Education

1 6. PRACTICE INVESTIGATION

2 Respondent shall be subject to, and shall permit, a practice investigation of
3 respondent's professional practice. Such a practice investigation shall be conducted by
4 representatives of the Board, provided notification of such review is accomplished in a timely
5 manner.

6 7. COMPLY WITH CITATIONS

7 Respondent shall comply with all final orders resulting from Citations
8 issued by the Board.

9 8. TOLLING OF PROBATION FOR OUT-OF-STATE
10 RESIDENCE/PRACTICE

11 In the event respondent should leave California to reside or practice
12 outside this State, respondent must notify the Board in writing of the dates of departure and
13 return. The period of non-California residency or practice outside the State shall not apply to
14 reduction of the probationary period, or of any suspension. No obligation imposed herein shall
15 be suspended or otherwise affected by such period of out-of-state residence or practice, except at
16 the written direction of the Board.

17 9. ENGAGEMENT LETTERS

18 Respondent shall use engagement letters with each new client or
19 engagement accepted during probation, and shall provide copies of same to the Board or its
20 designee upon request.

21 10. ACTIVE LICENSE STATUS

22 Respondent shall at all times maintain an active license status with the Board,
23 including during any period of suspension. If the license is expired at the time the Board's
24 decision becomes effective, the license must be renewed within 30 days of the effective date of
25 the decision.

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11. RETURN OF CLIENT PAPERS

The First Amended Accusation, Case No. AC-2001-28, references the Vinole engagement by which respondent NESS agreed to prepare the 1999 federal and state individual income tax returns for Robert Vinole. Within sixty (60) days of the effective date of the Decision herein, respondent shall return all documents relating to this engagement to Robert Vinole, including the 1999 tax returns prepared by respondent and the documentation that Vinole provided to respondent for preparation of the tax returns.

12. VIOLATION OF PROBATION

If respondent violates probation in any respect, the Board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation or Petition to Revoke Probation is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

13. COMPLETION OF PROBATION

Upon successful completion of probation, respondent's license will be fully restored.

B. This Stipulation shall be subject to the approval of the Board. If the Board fails to adopt this Stipulation as its Order, the Stipulation shall be of no force or effect for either party.

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02/19/2004

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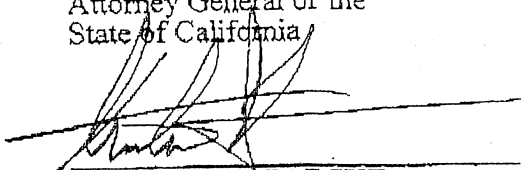
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ENDORSEMENT

We concur in the Stipulation and Order.

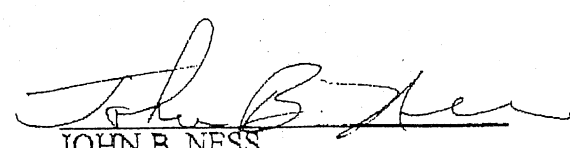
BILL LOCKYER
Attorney General of the
State of California

DATED: 2/19/04


RICHARD D. GARSKE
Deputy Attorney General
Attorneys for Complainant

I have carefully read and fully understand the Stipulation and Order set forth above. I understand that in signing this Stipulation, I am waiving my right to a hearing on the charges set forth in the Accusation on file in this matter. I further understand that in signing this Stipulation, the Board may enter the foregoing Order placing certain requirements, restrictions, and limitations on my right to practice public accountancy in the State of California. I agree that a facsimile copy of this Stipulation, including a facsimile copy of my signature, may be used with the same force and effect as the original.

DATED: 2/19/04


JOHN B. NESS
Respondent

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DECISION AND ORDER
OF THE CA BOARD OF ACCOUNTANCY

The foregoing Stipulation and Order, in Case No. AC-2001-28, is hereby adopted as the Order of the California Board of Accountancy. An effective date of December 22, 2004, 2004, has been assigned to this Decision and Order.

It is so ORDERED on this 22 day of November, 2004.

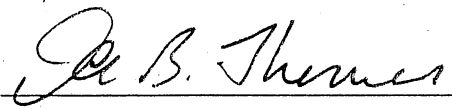

IAN B. THOMAS, BOARD PRESIDENT
For the California Board of Accountancy
California Department of Consumer Affairs

EXHIBIT A

**First Amended Accusation
Case No. AC-2001-28**

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Attorneys for Complainant

BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. AC-2001-28

JOHN B. NESS
4424 Felton Street
San Diego, CA 92116

FIRST AMENDED
ACCUSATION

CPA License No. 48489

Respondent

The Complainant, Carol Sigmann, for cause of accusation against JOHN B. NESS, alleges:

PARTIES

1. The Complainant, Carol Sigmann, is the Executive Officer of the California Board of Accountancy (hereinafter the "Board") and makes this First Amended Accusation solely in her official capacity.

2. On July 31, 1987, the Board issued to respondent JOHN B. NESS (hereinafter respondent "NESS") a certificate, No. 48489, of Certified Public Accountant, to practice accountancy in the State of California pursuant to the Accountancy Act, Division 3, Chapter 1, § 5000 et seq. of the California Business and Professions Code. On December 26, 1995, respondent's certificate was renewed through November 30, 1997. From December 1,

1 1997 through December 28, 1997, the certificate was in an expired status for failure to pay the
2 renewal fee and failure to submit a declaration of compliance with continuing education
3 regulations. On December 29, 1997, the certificate was renewed through November 30, 1999.
4 On December 1, 1999, the certificate expired for failure to pay the renewal fee and failure to
5 submit a declaration of compliance with continuing education regulations. Respondent's
6 certificate remains in an expired status.

7 JURISDICTION

8 3. Business and Professions Code § 5100 authorizes the Board to bring an
9 administrative disciplinary proceeding against a license holder under the Accountancy Act for
10 unprofessional conduct.

11 FACTS

12 THE LEATHERWOOD ENGAGEMENT

13 4. On January 25, 1997, Dr. James Stephen Leatherwood passed away,
14 leaving his assets in the James S. Leatherwood Trust (hereinafter the "Leatherwood Trust").

15 5. Randall R. Reeves was the initial trustee of the Leatherwood Trust. In
16 January, 2000, Randall R. Reeves resigned as trustee in favor of Cheryl Leatherwood who was
17 the sister of the deceased and the appointed Executrix of the estate of James S. Leatherwood.

18 6. In February, 1997, Cheryl Leatherwood retained respondent NESS to
19 prepare the 1996 and 1997 final individual income tax returns for Dr. James Stephen
20 Leatherwood and the 1997 tax return for the Leatherwood Trust.

21 7. Because Dr. Leatherwood had been living and working in Hong Kong
22 prior to his death, the parties had difficulty obtaining pertinent financial records. However, by
23 December, 1998, all documents necessary to prepare the tax returns had been delivered to
24 respondent.

25 8. In December, 1998, Cheryl Leatherwood had a meeting with respondent
26 NESS and understood that respondent would complete the tax returns in January, 1999.
27 Respondent completed the 1996 and 1997 individual returns, but did not forward the returns to

1 Cheryl Leatherwood for filing. Respondent failed to prepare the 1997 returns for the
2 Leatherwood Trust.

3 9. During 1999 and 2000, Randall R. Reeves and Cheryl Leatherwood
4 requested respondent on numerous occasions to complete the tax returns or return the financial
5 records of Dr. Leatherwood. Respondent NESS failed to answer said requests and failed to
6 return the client's records.

7 10. In January, 2000, Cheryl Leatherwood submitted a Consumer Complaint
8 concerning respondent NESS to the Board. The matter was assigned to Investigative CPA
9 Stephen E. DeRose (hereinafter "DeRose").

10 11. On March 16, 2000, Investigator DeRose caused to be mailed a letter
11 concerning the Consumer Complaint to respondent's address at 4424 Felton Street, San Diego,
12 California. On April 13, 2000, Investigator DeRose telephoned respondent's phone number
13 (619-284-1040) and left a message requesting respondent to return the call. On April 14, 2000,
14 Investigator DeRose caused to be mailed by certified mail another letter concerning the
15 Consumer Complaint. Said letter was returned unclaimed. Respondent NESS failed to respond
16 to the foregoing inquiries made by the Board or its appointed representative.

17 12. In August, 2000, Investigator DeRose requested assistance from the
18 Division of Investigation ("DOI") concerning Cheryl Leatherwood's Consumer Complaint. On
19 September 20, 2000, DOI Investigator Chris Gunst interviewed respondent NESS. On or about
20 September 27, 2000, DOI Investigator Gunst served an investigative subpoena upon respondent
21 for the financial records of Dr. Leatherwood. On October 3, 2000, respondent provided the
22 requested records to the DOI Investigator. The records were subsequently sent by Investigator
23 DeRose to Cheryl Leatherwood.

24 13. In surrendering the financial records of Dr. Leatherwood to DOI
25 Investigator Gunst, respondent prepared an inventory that contained a letterhead that referenced
26 respondent as a "Certified Public Accountant," at a time when his certificate was in an expired
27 status.

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15. Respondent NESS undertook the Vinole engagement at a time when his certificate of Certified Public Accountant was in an expired status.

17. In April, 2001, Vinole again telephoned respondent NESS and requested that respondent send both the 1999 tax returns and the documentation that Vinole had provided for preparation of the returns. Respondent refused, and continues in his refusal, to prepare Vinole's 1999 tax returns and return the client's documentation.

GROSS NEGLIGENCE

19. Business and Professions Code § 5100(c) provides that unprofessional conduct under the Accountancy Act includes gross negligence in the practice of public accountancy.

4.

1 trustees of the Leatherwood Trust. Respondent further committed gross negligence by failing to
2 prepare the requested tax returns of Robert Vinole, and failing to respond to inquiries from
3 Vinole about the tax returns and to demands for the return of his financial records.

4 SECOND CAUSE OF ACCUSATION

5 RETENTION 6 OF CLIENT RECORDS

7 21. Complainant incorporates herein by this reference the preamble and each
8 of the allegations set forth in paragraphs 1 through 17 hereinabove.

9 22. Business and Professions Code § 5037(b)(2) provides that a licensee shall
10 furnish to his or her client or former client, upon request and reasonable notice, any accounting
11 or other records belonging to, or obtained from or on behalf of, the client which the licensee
12 removed from the client's premises or received for the client's account.

13 23. Section 68 of Title 16 of the California Code of Regulations (hereinafter
14 "Board Regulations") provides, in pertinent part, that a licensee, after demand by or on behalf of
15 a client, for books, records or other data, whether in written or machine sensible form, that are
16 the client's records shall not retain such records.

17 24. Business and Professions Code § 5100(f) provides that unprofessional
18 conduct under the Accountancy Act includes a willful violation of the Act or any regulation
19 promulgated by the Board.

20 25. The certificate of Certified Public Accountant held by respondent NESS is
21 subject to discipline under Business and Professions Code § 5100(f), for a willful violation of
22 Business and Professions Code § 5037(b)(2) and Board Regulation 68, in that respondent
23 retained the financial records of Dr. Leatherwood after repeated demands for a return of said
24 records by the trustees of the Leatherwood Trust, as described in paragraph 9 hereinabove, and
25 respondent retained the financial records of Robert Vinole after repeated demands for a return of
26 said records by Vinole, as described in paragraphs 16 and 17 hereinabove.

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26. Complainant incorporates herein by this reference the preamble and each of the allegations set forth in paragraphs 1 through 13 and 24 hereinabove.

“A licensee shall respond to any inquiry by the Board or its appointed representatives. The response shall include making available all files, working papers and other documents requested. Failure to respond to the inquiry within 30 days constitutes a violation of Section 5100(f) of the Accountancy Act. Any inquiry by the Board requiring a response pursuant to this section shall be in writing. The 30-day response period begins when the inquiry is mailed to the licensee, or if not mailed, when personally delivered.”

FOURTH CAUSE OF ACCUSATION

29. Complainant incorporates herein by this reference the preamble and each of the allegations set forth in paragraphs 1 through 17 and 24 hereinabove.

31. Business and Professions Code§ 5055 provides that any person who has received from the Board a certificate of Certified Public Accountant and holds a valid permit to

1 practice under the Accountancy Act shall be styled and known as a "certified public accountant"
2 and may also use the abbreviation "C.P.A." Section 5055 further provides that no person, except
3 a partnership registered under Business and Professions Code §§ 5072 and 5073, shall assume or
4 use that title, designation, or abbreviation or any other title, designation, sign, card or device
5 tending to indicate that the person using it is a certified public accountant.

6 32. The certificate of Certified Public Accountant held by respondent NESS is
7 subject to discipline under Business and Professions Code § 5100(f), for a willful violation of
8 Business and Professions Code §§ 5050 and 5055, in that respondent used the title "Certified
9 Public Accountant" at a time when his license was expired, as described in paragraph 13
10 hereinabove, and respondent also entered into the Vinole engagement at a time when his license
11 was expired as described in paragraph 15 hereinabove.

12 COST RECOVERY

13 33. Business and Professions Code § 5107(a) provides that the Executive
14 Officer of the Board may request the Administrative Law Judge, as part of the Proposed Decision
15 in a disciplinary proceeding, to direct any holder of a permit or certificate found guilty of
16 unprofessional conduct, inter alia, in violation of Business and Professions Code § 5100(c), to
17 pay to the Board all reasonable costs of investigation and prosecution of the case, including, but
18 not limited to, attorneys' fees. Section 5107(a) further provides that the Board shall not recover
19 costs incurred at the administrative hearing.

20 34. In the event that the Administrative Law Judge finds that respondent
21 NESS has committed unprofessional conduct in violation of Business and Professions Code §
22 5100(c), Complainant requests that the Proposed Decision provide for the recovery of all
23 reasonable costs of investigation and prosecution of the case, according to proof, pursuant to
24 Business and Professions Code § 5107.

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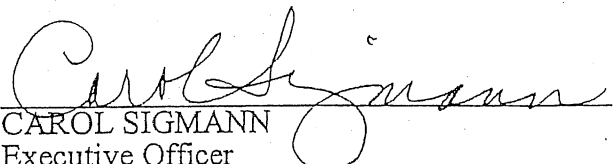
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1 WHEREFORE, the complainant requests that a hearing be held on the matters
2 herein alleged, and that following said hearing, the Board issue a decision:

- 3 1. Revoking, suspending or otherwise imposing discipline upon Certified
4 Public Accountant Certificate Number 48489, issued to JOHN B. NESS.
5 2. Awarding the Board costs as provided by statute; and
6 3. Taking such other further action as may be deemed proper.

7
8 DATED: July 2, 2002
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11 
12 CAROL SIGMANN
13 Executive Officer
14 California Board of Accountancy
15 Department of Consumer Affairs
16 State of California

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TLN:mso 5/3/02

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